

1 A F T E R N O O N S E S S I O N

2 MR. HARNETT: I'd like to welcome everyone
3 back.

4 If we could have the first speaker of
5 the afternoon, Steve Meyers from General Electric.

6 MR. MEYERS: Thank you, Bill.

7 Good afternoon. I'm Steve Meyers. I'm
8 counsel and air program lead for GE. I'm glad I'm
9 the only GE person here because I'm going to break
10 two fundamental rules of GE speechmaking; I'm
11 going to read from a prepared text, and I don't
12 have any visuals.

13 We're glad to have this opportunity to
14 address the task force because we have a
15 significant interest in the program and believe it
16 can be improved if all the stakeholders work
17 together. We've always participated in EPA's
18 efforts to shape and reform the program. GE is a
19 member of NEDA and the Air Permitting Forum and
20 has participated in other industry groups that
21 focus on air, regulatory, and legislative issues.

22 I've been doing air work for about 10,
23 12 years, but my comments today really reflect the
24 input from dozens of GE employees who deal with

1 the Title V program on a day-to-day basis, from
2 application to final permit and beyond to
3 compliance certification. I hope that our
4 perspective is one that you will find useful in
5 the task force's work.

6 I think we have a somewhat unique
7 perspective on the program because of our business
8 diversity. We manufacture a great array of
9 products and perform countless wide-ranging
10 services. Some people think of GE as a financial
11 services company, many others just think of light
12 bulbs and dishwashers, but our Title V base
13 encompasses numerous industries from high-tech
14 medical devices to efficient electric-generating
15 equipment to high-grade thermoplastics to more
16 traditional manufacturing like glass and -- for
17 the light bulbs, motors, appliances, and the like.
18 And we just added a theme park and movie studio to
19 our repertoire.

20 On the financial side, GE's businesses
21 invest in companies that engage in a wide range of
22 operations, like aviation, power generation, and
23 more. We have some big facilities. We also have
24 some very small ones.

1 From a geographic standpoint, we operate
2 Title V facilities in some 15 states, and we
3 therefore deal with both local and state agencies
4 in numerous EPA regions. We have a total of 41
5 Title V sites.

6 Although GE is concerned about many
7 aspects of the Title V program as currently
8 implemented throughout the country today, I intend
9 to focus on one discrete issue, and that is the
10 manner in which state agencies are incorporating
11 MACT standards and other regulations into Title V
12 permits.

13 The problems that we're encountering
14 really come in three forms. In one form the
15 permit writer redrafts a rule such as a MACT
16 standard and customizes it for each unit of the
17 facility. We certainly heard some testimony about
18 that earlier today. In these cases, the permit
19 writer paraphrases the rule requirements to sort
20 of translate their applicability to the source.

21 And we're concerned not only with the
22 time that it takes to ensure that the translation
23 is accurate and does not diminish or add to the
24 legal burden, but also with the potential that it

1 creates for competing applicable requirements and
2 subsequent certification problems. We call that
3 the translation approach.

4 In the second form, the state either
5 attaches a complete copy of the MACT Federal
6 Register entry in all its glory or restates the
7 MACT word for word. We call this the full
8 employment for Georgia-Pacific approach.

9 While this approach is preferable to the
10 translation approach, it's wholly unnecessary,
11 adds nothing from an environmental perspective,
12 and increases the burdens on sources and
13 permitting authorities, not to mention the size of
14 the permits.

15 The third form of concerns relates to
16 the limited flexibility. And it can occur either
17 through -- in the translation approach or the full
18 employment for Georgia-Pacific approach. We're
19 seeing permitting authorities that require a
20 source to choose among compliance or other options
21 offered in a MACT and then mandate a permit
22 revision to deviate from those choices.

23 This occurs notwithstanding the fact
24 that the MACT will specify how changes are to be

1 handled, including the appropriate notifications,
2 adding another layer to a process that has already
3 been approved through notice and comment
4 rule-making.

5 What's interesting to us is that
6 regardless of the approach being taken in a
7 particular state, we're told that EPA requires it.
8 And this happens even though there are states that
9 are using the citation-based approach that allows
10 facilities the flexibility to MACT standards as
11 promulgated.

12 So focusing on the translation approach,
13 what's wrong with reducing complex rules like MACT
14 standards to summaries that are customized to fit
15 one source only? Well, several things.

16 It imposes a tremendous workload on both
17 the permit writer and the facility. Translating a
18 MACT for a complicated facility in the context of
19 a Title V permit is a large task. One of GE's air
20 permit engineers estimates that he's spending
21 twice as much time on his Title V permit than
22 would be needed if the state used a citation-based
23 approach.

24 It also creates a strong potential for

1 unintentional variation from the regulatory
2 standards. And we've found numerous errors as a
3 result of this approach, leaving out some
4 requirements, including others that don't apply,
5 and simply misstating requirements for a
6 particular unit. I'll give you some examples
7 later in my speech.

8 A slight change in wording could change
9 the meaning of a defined term, obviously. And we
10 all know the regulations like MACT standards are
11 often painstakingly and some would say painfully
12 drafted to ensure each word's meaning is clear.
13 Translating or paraphrasing creates the
14 possibility of changing the meaning of the rules.
15 We think the rule-making process is when issues of
16 what a standard means are to be handled, not
17 during the permitting process. And a permit
18 writer who is not steeped in the lore of
19 particular MACT may not know when he or she is
20 crossing the line and actually changing the
21 standard.

22 I guess it goes without saying that the
23 translation approach slows the permit issuance
24 process. Much of the negotiating that goes on

1 between a permit writer and a permittee could be
2 eliminated if rules were incorporated by reference
3 rather than rewritten.

4 Moreover, I think permit appeals could
5 be avoided in many cases, as could the need to do
6 subsequent revisions of the permit when the errors
7 are ultimately caught. It can limit operational
8 flexibility because it may take away compliance
9 alternatives that are built directly into
10 regulations, such as MACT standards.

11 Title V was never intended to constrain
12 changes that are allowed by the underlying
13 standard, yet that is occasionally the result of
14 the translation approach. It also creates
15 operational burdens, such as retraining plant
16 personnel on individual permit requirements that
17 may vary from rules in which the person had
18 already have been trained.

19 Some say that paraphrasing and
20 translating the rules is preferable because it
21 helps the permittee, the public, and enforcement
22 officials understand in one document that requires
23 that are applicable to a source. We disagree that
24 this is true or that it's a reasonable goal for

1 Title V. I think translating the MACT standards
2 into lay terms is not the purpose of Title V and
3 maybe ought to be handled through some other
4 process. Title V permits are legal, enforceable
5 documents to which the permittee must certify
6 compliance and for which the public, the state,
7 and the EPA hold us accountable. So it's got to
8 be accurate.

9 We think that Title V ought to concern
10 itself with being the place where all applicable
11 requirements are cataloged and the education of
12 inspectors and others might be a good idea, but
13 the Title V permit should not be the course
14 material. Maybe we could create a separate,
15 publicly available inspection guideline. The
16 consequences, many of them unintended, of trying
17 to accomplish educational goals and a legally
18 binding document are many and significant.

19 I'll give you a couple of examples of
20 the mischief that can be made from one of our
21 facilities in Indiana, and these are just a few of
22 the many examples that I got from our plants
23 across the country.

24 Here is an example where a -- there

1 could be a change in a current requirement. One
2 narrative summary of a section of the HON MACT
3 excludes the 63.104(a) exemptions and requires
4 monitoring of each heat exchange system, which
5 goes beyond the applicability of 63.104(a) that
6 limits monitoring to systems used to cool process
7 equipment and do not meet the exceptions.

8 Another proposes striking the portion of
9 63.132(a) that specifies the compliance state,
10 which is important when considering new or changed
11 wastewater streams. An example where there are
12 changes limiting flexibility, one narrative
13 summary of a section of the HON MACT proposes to
14 strike words in 63.113(a)(2) that allow
15 determining compliance by alternative measuring
16 techniques, either using OHAP or TOC in 63.116.
17 And another proposes striking the provision in
18 63.150(f)(iii) that allows demonstration that full
19 or partial credits or debits should be assigned.

20 We've also found some instances where
21 narrative customization errors create administrative
22 burdens or oversights. One narrative summary of a
23 provision does not incorporate the recordkeeping
24 provisions in 63.117(a)(8).

1 And I could go on, but you can see this
2 approach not only requires the permit writers and
3 plant personnel alike to spend countless
4 unproductive hours, but it also creates the risk
5 of confusion and substantive mistakes.

6 As evidenced by John Paul's testimony at
7 the task force meeting in Washington, this issue
8 is also cropping up in Ohio. I was talking about
9 Indiana permit terms, but we've seen various
10 approaches by the states, possibly because there
11 is some confusion as to what's required or what is
12 appropriate. At the end we need to be spending
13 more time on ensuring compliance instead of
14 figuring out how to indicate in the permit what we
15 all agree is required.

16 With respect to the repetition of the
17 entire MACT in the permit, I don't think much
18 needs to be said about this. It's redundant. We
19 just don't need to attach entire Federal Register
20 notices to the permit. Nothing is really gained
21 by that.

22 Under a citation-based approach, a
23 permit would, for each emission unit section, cite
24 to the relevant portions of the MACT standard.

1 We're not suggesting that the permit only cite to
2 the subpart level. More detailed citations could
3 be appropriate, provided they preserve the
4 flexibility that is included within the MACT.

5 My final point does go to this
6 operational flexibility. EPA and the members of
7 this task force are aware that MACT standards are
8 carefully negotiated with particular compliance
9 and other options for sources due to the
10 flexibility needed for that particular category.
11 The EPA staff is also particularly precise in
12 spelling out how changes from one of these options
13 to another are to occur and the notifications and
14 other submittals and testing that might need to be
15 accomplished.

16 EPA issues those procedures after notice
17 and comment rule-making. In any approach that is
18 adopted for incorporating MACTs, these options
19 must be preserved, rather than adding another
20 layer with a required Title V permit revision.

21 We are constantly seeing refreshes --
22 maybe constantly is a strong word. We are seeing
23 requests from permitting authorities to limit our
24 compliance options, notwithstanding the work that

1 we have done to ensure that flexibility is
2 provided in the MACT.

3 So we ask that the task force include in
4 its final report a recommendation that MACT
5 standards be incorporated using a citation-based
6 approach that provides the same flexibility with
7 respect to compliance options, as --

8 MR. HARNETT: You have two minutes.

9 MR. MEYERS: Thanks, Bill.

10 (Continuing) -- within the promulgated
11 rules. In the interim, EPA regional offices
12 should provide consistent guidance to the states
13 clarifying that neither translating nor
14 word-for-word repetition of the MACT is required
15 and that the federal Title V rule mandates states
16 to include the compliance options afforded by
17 applicable requirements. Any other conclusion
18 would be to suggest that MACT standards, as
19 promulgated, are not enforceable.

20 Thank you for your time and attention.

21 MR. HARNETT: Thank you. And Richard Van
22 Frank?

23 MR. VAN FRANK: With the problem you cited in
24 Indiana, was that in the technical support

1 document or the actual permit?

2 MR. MEYERS: The actual draft permit.

3 MR. VAN FRANK: Thank you.

4 MR. HARNETT: Steve Hagle?

5 MR. HAGLE: I tend to agree with you, Steve,
6 about the flexibility.

7 One of the things that I wanted to

8 comment on is where some of the permitting
9 authorities may have come up with that, as we had
10 however many years ago this discussion about Title
11 III, Title V interphase, and one of the things
12 that EPA was telling its states was that if you
13 change a compliance method, you did have to do a
14 Title V revision, if you hadn't built that into
15 the permit.

16 So one of the things that I hope we can
17 come up with is what is the appropriate level of
18 citations? We're getting beat up in Texas because
19 we're getting some pretty detailed citations into
20 our permit, but I'm wondering what your thoughts
21 are on how deep into the MACT or any standard
22 those citations should go?

23 I know you said not limiting -- not
24 limiting flexibility, but some of those

1 flexibility limitations are pretty -- are way up
2 there in the level of detail in the MACT, and, you
3 know, I know some of the environmental groups
4 have -- would like to be able to comment on how
5 sources are going to comply with a particular
6 standard. So I'm trying to figure out where you
7 all think that balance should be.

8 MR. MEYERS: Well, I guess to the first point
9 you made, I think that the various different
10 compliance options are specified within the MACT
11 standards, and so a citation to the MACT standard
12 would preserve those various different compliance
13 options. That would be our position anyway.

14 As to the specificity with which the
15 citation should be made, I guess it's going to
16 vary a bit from provision to provision. I guess
17 my point was that it needn't necessarily be as
18 high as Section A. It could be more detailed than
19 that, although we certainly wouldn't -- we
20 wouldn't comment negatively on a permit that came
21 back with the highest-level citation. I
22 understand that some -- that that may not be the
23 preference of some other stakeholders, and so
24 there may be, I think, some middle ground.

1 MR. HAGLE: I want to follow up one quick
2 thing. Like the aerospace MACT, I think there is
3 one provision in that, there are nine different
4 options for compliance.

5 Do you think that you as a company
6 should be required to say, "Okay, we may use these
7 five, and these five are the ones we want in our
8 permit," or do you want something higher than
9 that?

10 MR. MEYERS: I don't think it's a problem --
11 I wouldn't have a problem with the company
12 providing information to help the agency, but I
13 think it ought to be outside of the permit. I
14 don't think the company ought to be limited by
15 what it thinks it's going to do, if the rule
16 provides for much greater flexibility.

17 I understand that, you know, nine is a
18 lot, but those are the nine that were agreed upon
19 and were included in the rule. But I don't have a
20 problem with a communications process that, you
21 know, provides this kind of information to the
22 agency, outside of the legally binding document.

23 MR. HARNETT: Kelly Haragan?

24 MS. HARAGAN: I had a question about maybe

1 using a combination approach to what you're
2 suggesting, which is what Texas was doing -- I
3 don't know if they're still doing -- in the
4 permit.

5 They have a citation, and I think the
6 real issue is the level of detail, where you get
7 the citation down to. But then they also include
8 a short narrative description, but the permit says
9 that's not enforceable. The citation is what's
10 enforceable. It's just there for the people who
11 are using the permit. Like if the public is
12 looking through it, then they can narrow down,
13 "This is what I was looking for."

14 MR. MEYERS: I think that would be preferable
15 to translating the MACT standards within the
16 certifiable portions of the permit. I mean, we
17 would probably get into arguments over that
18 anyway, because that's just the nature of the way
19 things go.

20 MS. HARAGAN: Right.

21 MR. MEYERS: But I do think that would be a
22 preferable approach.

23 MS. HARAGAN: Okay, thanks.

24 MR. HARNETT: Adan Schwartz?

1 MR. SCHWARTZ: That's what the District Bay
2 Area does, by the way, also. At least in some
3 places we paraphrase, but we make it very clear
4 that you have to look at the regulation for what
5 is binding.

6 My question is, I've heard some people
7 say that regarding putting multiple compliance
8 options in the permit, that doing so is what Part
9 70 had in mind when it talks about alternative
10 operating scenarios. I don't know if that's right
11 or not, but let's assume for a moment that it is.

12 The consequence of that would be when
13 you switch from one to another, you'd have to give
14 notice, and there would have to be contemporaneous
15 recordkeeping. So my question is, do you think
16 that would be burdensome if that was all that's
17 required, or alternatively do you think that's
18 redundant with the MACT standards already required
19 in terms of notice of recordkeeping?

20 MR. MEYERS: I think the MACT standards do
21 provide that that very thing that you are looking
22 for, that notification -- and if anyone would care
23 to look, they would find it in a file. And I
24 don't think that -- I think the rules themselves

1 are the provision of the alternating scenarios.
2 They provide for alternate scenarios. And so
3 specifying differently, I think, is not required
4 by the rules.

5 MR. HARNETT: Bob Palzer.

6 MR. PALZER: I'm done.

7 MR. HARNETT: Then Don van der Vaart?

8 MR. VAN DER VAART: I've got to agree with
9 Adan. With the way we handle this in North
10 Carolina is we give you all the options, and then
11 we just ask you to keep a log when you go from one
12 to the next.

13 I think a lot of what you're concerned
14 with is not only the fact that the rules
15 themselves are much more complicated than any of
16 the SIP or NSPS standards, but as anywhere, you've
17 got permit engineers that are making mistakes.
18 And so I wouldn't -- I'm not hearing from you a
19 failing of the Part 70 program per se, but the
20 inability to successfully implement it.

21 But now here is my question, totally
22 different.

23 What does GE think about -- does GE
24 typically ask for a permit shield in their

1 permits? It's optional in the Clean Air Act. In
2 some states it's actually mandatory. But do you
3 all ask for it typically, or how do you all --

4 MR. MEYERS: When it's available, absolutely.

5 MR. HARNETT: John Higgins?

6 MR. HIGGINS: Steve, could you repeat the
7 last two sentences of your presentation? I'm not
8 sure I heard them properly.

9 MR. MEYERS: I think it was thank you very
10 much, and --

11 MR. HIGGINS: What did you mean by that?

12 I thought I heard you say something was
13 not enforceable, and I don't think I heard
14 everything you said.

15 MR. MEYERS: Well, I was -- the point was
16 to -- right. The point was the word for word, the
17 MACT has to be incorporated as promulgated, which
18 preserves the various different compliance
19 options. Any other conclusion would be to suggest
20 that the MACT standards themselves were not
21 enforceable. The point was the MACT standards
22 have to be -- you have this flexibility in the --
23 in the rule, and if you don't -- if you don't
24 preserve that flexibility in the Title V permit,

1 then you're suggesting that the MACT itself is
2 somehow not enforceable or is not a final -- is
3 not the final binding provision.

4 MR. HIGGINS: Okay. In the instance where
5 you have a MACT with multiple opportunities to do
6 this, that, and the other thing, how does General
7 Electric propose to keep the regulators and the
8 interested public up to speed on exactly what you
9 are doing at any moment in time?

10 MR. MEYERS: I would just say as the MACT
11 standards require. And most of the MACT
12 standards, understanding this concern on the part
13 of the regulators and the public to be informed,

14 require notice and recordkeeping on these various
15 different scenarios, and I would say that's the
16 place to address that concern, is within the MACT
17 standards themselves. I think they adequately do,
18 John.

19 MR. HARNETT: Michael Ling?

20 MR. LING: I'm just wondering if you would
21 say that there is something special about MACT
22 standards, which is why you focused this talk on
23 MACT standards, or whether this approach of
24 incorporation by reference could apply to any

1 applicable requirement.

2 MR. MEYERS: Absolutely. I think we focused
3 on MACT standards because they are so complex and
4 because we're having so much difficulty with
5 the -- with the permits that include MACT
6 standards, getting them to a reasonable, final
7 resolution.

8 All of what I've said absolutely applies
9 to any kind of standard or rule; an incorporation
10 by reference would simplify the process for
11 standards other than MACTs. We focused on MACT
12 standards because they're as complex as they get.

13 MR. HARNETT: Keri Powell?

14 MS. POWELL: Just for clarification, you were
15 talking about the tremendous workload that goes
16 into creating a customized MACT, and I guess my
17 immediate reaction to that was, well, I mean, at
18 some point somebody has to go through and figure
19 out exactly how the MACT applies to each facility.
20 So, I mean, isn't some amount of that work, work
21 that has to happen anyway?

22 MR. MEYERS: I certainly agree that we, the
23 permittee, have to go through and figure out how
24 the standard applies to our facility, and so that

1 will go on.

2 The additional work that goes into
3 back-and-forth revisions and negotiating with the
4 agency over what the MACT standard -- how it
5 should be included in the permit is what I was
6 referring to as the burden. And that, itself, is
7 a remarkably large burden.

8 MS. POWELL: I mean, does that involve -- I
9 realize that there would be some conflicts, or
10 exactly what word you used to express how the rule
11 applies.

12 But also I'm guessing that there might
13 be some dispute over how the rule does apply to
14 the facility. I mean, do you find that coming up?

15 MR. MEYERS: Not as much. We do, and that's
16 to be expected, and we negotiate and come to a
17 resolution. That does happen.

18 MS. POWELL: So just one last follow-up.
19 Part of Congress's intent in requiring the Title V
20 program was that so if there were any differences
21 between how the permitting authority reviews the
22 rules of applicability and how the public and the
23 source view it, all of that will be resolved in
24 the permitting process, rather than further down

1 the line when there is an enforcement action and
2 you're in district court arguing about it.

3 So if you just moved to an incorporation
4 by reference approach that sort of put all this
5 off somewhere down the line, how does that conform
6 to Congress's intent?

7 MR. MEYERS: Well, I think very little of
8 the -- first of all, not disputing with you that
9 that was Congress's intent, I think very little of
10 what we're encountering is actually beneficial to
11 that ultimate goal.

12 The problems that we're seeing are, I
13 think, not indicative of -- the conversations that
14 we're having don't necessarily indicate a
15 difference in opinion between the way the
16 permittee and the agency view applicability. That
17 is a very small percentage of it. It's permit
18 writers not understanding the rules, and frankly
19 it's just not the permittee's responsibility to
20 educate the permit writer. And I think much of
21 what we're talking about is wasted energy or
22 energy that might be better applied outside of
23 this process. I don't think that goal is
24 furthered by trying to translate MACT standards in

1 the permit.

2 MR. HARNETT: David Golden?

3 MR. GOLDEN: Kind of playing along that
4 point, we run into the same thing, and I'm curious
5 if you've seen root cause on that? Do you find
6 that in the state -- your permit writer, do you
7 find them mostly familiar with MACT, or do you
8 find them that you're pretty much the only MACT
9 source and so you kind of got to get them up to
10 speed on your four or five MACT standards, then
11 they transfer and you get a new one, and you've
12 got to get them back up to speed? Is turnover --
13 does it play into this?

14 MR. MEYERS: Some of it does, yeah. I think
15 it's asking a lot of a state agency to have, you
16 know, permit writers who are also MACT standard
17 experts in 15 to 20 different MACT standards. I
18 mean, I agree with you there.

19 MR. GOLDEN: I know someone testified a
20 little earlier today on that issue. You know,
21 there is a lot of MACT out there, and it would
22 seem hard to make -- you know, usually the
23 permittee is pretty expert at knowing what is
24 applicable. Do you see a solution to that of how

1 states can do a better job of allocating resources
2 so you develop more MACT expertise?

3 MR. MEYERS: I think probably so, but I think
4 the best thing to do is probably -- you'd like to
5 have permit writers who know as much about various
6 different facilities and industries as possible.
7 I don't know if that's possible.

8 I think you avoid significant issues
9 like this by incorporating the MACT standard
10 through a citation-based approach. I think there
11 are probably other things we can do. But I guess
12 I'm not sure I am qualified to opine on how the
13 state agencies ought to go about training and
14 allocating their resources.

15 MR. HARNETT: One more question; Shannon
16 Broome?

17 MS. BROOME: Steve, is it accurate to say
18 that for your MACTs, the ones that you're dealing
19 with, either at facility you were talking about or
20 any other one, that there is a notification to the
21 state -- not to the state, to EPA and the state,
22 or if the state's delegated, whatever, regarding
23 how you're going to comply with the MACT and that
24 that's publicly available?

1 MR. MEYERS: I believe so, and I thought I
2 made that clear earlier.

3 There are notification provisions in the
4 MACTs that we're dealing with that I'm aware of.
5 So that there is that -- some of that information
6 that's available and required to be provided.

7 MS. BROOME: So if there was a dispute about
8 how that MACT applied between you and the agency,
9 be it EPA, region, or state, that would surface?

10 MR. MEYERS: With respect to those options,
11 yes.

12 MR. HARNETT: Thank you very much for your
13 time.

14 The next person is Anne Slaughter
15 Andrews, from the CASE Coalition.

16 MS. ANDREWS: My name is Anne Slaughter
17 Andrews, and I'm here today on behalf of the CASE
18 Coalition, which is an Indiana-based coalition of
19 about a dozen leading industrial and manufacturing
20 companies, each with significant operations in
21 Indiana.

22 Our members produce such goods as steel,
23 chemicals, pharmaceuticals, automotive, and
24 aerospace parts. Our members operate facilities